



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, January 11, 2007, 7:30 p.m.  
777 B Street, Hayward, CA 94541**

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**MEETING**

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m., by Chair McKillop followed by the Pledge of Allegiance.

**ROLL CALL**

Present: COMMISSIONERS: Lavelle, Sacks, Peixoto, Thnay, Mendall, Zermeño  
CHAIRPERSON: McKillop  
Absent: COMMISSIONER: None

Staff Members Present: Connolly, Koonze, Rizk, Lens

General Public Present: Approximately 25

**PUBLIC COMMENTS**

There were no comments.

**PUBLIC HEARINGS**

Planning Manager Rizk introduced Assistant City Attorney Connolly and indicated that he would be acting in place of Assistant City Attorney Conneely.

1. **Tentative Parcel Map No. 7990 – Mai Nguyen (Applicant/Owner)** - Request for a One-Year Extension of the Tentative Parcel Map to Subdivide Two Parcels into Three Lots for Single-Family Homes

Staff report submitted by Acting Development Review Engineer Koonze, dated January 11, 2007, was filed.

Acting Development Review Engineer Koonze presented the report.

In response to Commissioner Mendall's inquiry regarding a policy or history about the number of times the City can grant an extension, Acting Development Review Engineer Koonze indicated that there have been extensions in the past and referred to the Zoning Ordinance which allows for a two-year approval of a map and up to three-years of subsequent approvals. He added that the proposed project would be on its subsequent third year. Planning Manager Rizk added that the State Map Act would allow up to five years and every time it would require discretionary review.

Chair McKillop opened the public hearing at 7:40 p.m.

Applicant Mai Nguyen was available for questioning.

Chair McKillop closed the public hearing at 7: 42 p.m.

Commissioner Sacks made a motion to move the item as per staff recommendation. She indicated that since the first extension, the property has been well maintained.

Commissioner Mendall and Commissioner Lavelle seconded the motion.

Commissioner Sacks moved, seconded by Commissioner Mendall and Commissioner Lavelle, and unanimously approved, to rely on the previously approved environmental findings and approve a one year extension of the tentative parcel map.

2. **Text Amendment No. PL-2006-0544 – Initiated by the Planning Director** – Proposal to Amend the City of Hayward Subdivision Ordinance, Section 10-3.350 through Section 10-3.395: "Condominium, Community Apartment, and Stock Cooperative Subdivisions," Governing Conversion of Residential Rental Complexes to Ownership Housing

Staff report submitted by Planning Manager Rizk, dated January 11, 2007, was filed.

Planning Manager Rizk presented the report. Building Official Elliott presented the conversion requirements related to meeting building standards as outlined in the report.

In response to Commissioner Sack's inquiry regarding smoke detectors that are hard-wired, Ms. Elliott responded that they have back up batteries. Additionally she proposed that the \$1,000 moving expense presented in the reported be tied to the rate of inflation.

In response to Commissioner Peixoto's question regarding professional property managers that expressed interest in serving projects of 15 or less dwellings and the cost associated with administrative functions, Planning Manager Rizk indicated that there were two companies contacted that expressed interest in serving smaller complexes, with one indicating they would be willing to serve complexes as small as eight units. He added that there would be a higher per unit fee for smaller complexes and referred to the concern of the requirement to have a Homeowners' Association (HOAs) in smaller complexes and the difficulty of having management companies. Additionally, Mr. Peixoto inquired about the reasoning for a fixed \$200 contingency fee, to which Mr. Rizk explained that, although the ordinance indicates a fixed amount, it does not necessarily have to be a fixed amount and that the subdivider, as opposed to the homeowners association, would be required to convey the fee. In response to Mr. Peixoto, Mr. Rizk stated that a homeowner can rent out the condominium after having purchased it.

Commissioner Zermeno inquired if the public nuisance provision included private streets within the complex, besides landscaping and graffiti. Planning Manager Rizk responded that the CC&Rs typically include language for areas to be maintained in acceptable condition, including private streets. Mr. Zermeno recommended that it would be more realistic to have the \$200 per unit contingency fee as a percentage source.

Commissioner Mendall inquired if the proposed amended ordinance could be considered for a



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mobilehome park. Planning Manager Rizk indicated that it could apply to mobilehome rental units that could be created as individual lots for ownership. In reference to affordable units, Mr. Rizk indicated that the Inclusionary Housing Ordinance requires that affordable units be compatible in terms of size and amenities to the market rate units. Mr. Mendall echoed comments by Commissioner Sacks regarding adjusting for inflation.

Commissioner Lavelle asked for clarification regarding owner occupied units and any discretion to require that converted condominiums be occupied by the owners beyond the Inclusionary Housing Ordinance. Planning Manager Rizk indicated that because of State regulations and because it is not required that new market rate units have owner occupied provisions, it was not recommended that the provision be included.

Commissioner Thnay referring to Attachment B, item 6 of page 9, that "no remodeling of the interior of tenant occupied units shall begin without consent of the tenant", and the comments submitted by Mr. Simpson, asked for an alternative. Planning Manager Rizk indicated that the reports addressing deficiencies have to be submitted prior to the final map being recorded, but remodeling/upgrades can occur after the map is recorded, but prior to certificate of occupancy. He added that what is required prior to the final map being recorded is a report identifying items that need to be addressed, such as those listed in the building conditions provisions of the ordinance.

Chair McKillop asked for clarification about the Inclusionary Housing Ordinance and indicated disagreement that one out of three or four units has to be inclusionary housing.

Chair McKillop opened the public hearing at 8:17 p.m.

Mr. David Stark, Government Affairs Director for the Bay East Association of Realtors, thanked staff for consideration to input provided about the ordinance. As a former City employee operating the First Time Homebuyers Program, he clarified that the Inclusionary Housing Ordinance would apply to 20 or more units. He spoke favorably about the condominium conversion. He pointed out items within the ordinance that he would like reviewed, such as: that the ordinance be applicable to developments of five or more units, no need for additional tenant noticing since is already provided by State law, keeping tenants in their units while going through conversion in order to turn them into owners, and no need for regulation of tenant incentives since they are already provided. In regards to open space and parking, he would like consideration to conforming uses and as far as building codes requirements, he would support consideration to preserving health and safety. He supported attainability of the 70 percent homeownership goal through conversion of renters into home owners.

Chair McKillop asked for an estimated percentage of tenants that would become homeowners in a typical conversion project. Mr. Stark indicated that following realtor speakers would better address the question.

Ms. Laura Rivera, realtor with Caldwell Bank in Castro Valley, indicated that condominium

conversions are affordable for first-time homebuyers.

Ms. Anne Biddell, landlord and realtor in Hayward, indicated that condominium conversions add to the stability of the neighborhoods and schools. She added that the concern that condominiums might turn into rental units would be addressed during financing, since lenders prefer to finance units that are owner-occupied. She expressed concern for the \$200 per unit emergency fee for the reserve and indicated that the State already mandates a budget overseeing the financing and that the owner has to feed the reserves in case of emergencies. She urged the commissioners to move forward with the item. In response to Commissioner Mendall's question, Ms. Biddell indicated that the original developer has to pay for a portion of major improvements, such as the replacing of a roof after 10 years.

Mr. Dan Dineen, Oakland realtor and Hayward resident, indicated that the cost of doing the conversion is paid for by the original homeowner. He mentioned that making provisions for units of four or less is impractical when trying to enforce it, and thus favored five or more units because they apply to the State Department of Real State (DRE) standards. Commissioner Peixoto inquired if the DRE has any oversight after the apartment is converted. Mr. Dineen responded that the responsibility reverts to the property owner.

Per Commissioner Zermeno's request, it was clarified that the proposed \$200 per unit contingency fee would be in addition to the State mandated fees.

Ms. Chiasson, realtor and resident of Hayward, indicated that as a first-time homebuyer and low-income buyers expert, she believes that conversions are the only opportunity for those populations. She spoke favorably about the conversions.

In response to Commissioner Sacks, Ms. Chiasson indicated that condominium conversion is not a threat to supply of rental units in Hayward because in her experience, a high percentage of occupants have become homeowners.

Mr. Knight, realtor and developer, indicated that converting rental properties that are in disrepair into homeownership increase the property value. He spoke in support of conversion of four units and less and added that currently there is motivation to do conversion at different levels and urged the Commissioners to support the proposal. In response to Commissioner Zermeno, Mr. Knight indicated that four-unit buildings create a small community and thus are easier to convert. In response to Commissioner Thnay, Mr. Knight clarified that he is in agreement with having the ordinance only address conversions of five units or more and mentioned that he is concerned that the rest of the ordinance take into account other laws such as those of the State Department of Real Estate. In response to Commissioner Peixoto's inquiry about problems encountered with homeowners associations, and property management for small property units, Mr. Knight indicated that he had to create a corporation and put in place a professional team to advise the property owners.

Mr. Simpson, Grandview Realty Broker, reiterated comments submitted to staff prior to the meeting. In response to Commissioner Thnay's request for clarification about tenant assistance, Mr. Simpson suggested that the five-to-ten percent assistance in the form of a down payment can be a more favorable financing option.



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Mr. Cano, property owner, indicated that he bought a four unit building with the intention of converting it into a condominium, but the project encountered obstacles because the parking space did not meet current standards.

In response to Commissioner Thnay's inquiry regarding prospective solutions for condominiums that do not conform to parking requirements, Planning Manager Rizk offered alternatives such as combining units to reduce parking standard requirements, , or a consideration that the ordinance contain a provision for a variance. He added that the payment of an in-lieu parking fee was not considered as an alternative. Mr. Thnay further expressed concern for those small units that might not be able to meet parking requirements and not be financially feasible.

Ms. Le, loan officer for Bank of America, indicated that from experience dealing with first-time homebuyers and low-income families, condominium conversions were more affordable along with financial assistance in the form of down payment assistance.

Chair McKillop closed the public hearing at 9:04 p.m.

Commissioner Mendall required clarification about the section of the report required to be submitted to the Department of Real Estate (DRE) about the homeowners association and its ability to maintain the property.

Commissioner Thnay thanked the realtors for their experienced input and recommended that the ordinance uphold the DRE regulation of five units or more. He concurred with Mr. Simpson that the five-to-ten percent price discount also be in the form of down payment assistance as an option. He further recommended that language be added regarding a parking variance or in-lieu fee as means of dealing with potential parking problems.

Commissioner Zermeno concurred with the State's standard that addresses conversions of five or more units. He entertained the consideration of bicycle racks as the project advances. He made a motion to move to recommend to the City Council adoption of the draft ordinance and related negative declaration, as per the staff recommendation, with the exception of including tri-plexes and four-plexes, to be consistent with the State's standard of five or more units. He expressed that the ordinance will increase homeownership, will refurbish old buildings, will protect the elderly, and will take into account homeowners associations.

Commissioner Sacks seconded the motion.

Commissioner Thnay offered a friendly amendment that staff include comments regarding parking and the advantages and disadvantages of parking variance and in-lieu fees. Commissioner Zermeno accepted the friendly amendment, but Commissioner Sacks did not accept it.

Chair McKillop offered a friendly amendment to add a ten percent discount or five to ten percent

assistance in the form of down payment assistance. The amendment was accepted by Commissioner Zermeño.

In reference to the recommendation that staff comment on the parking issue, Commissioner Sacks indicated that if a unit cannot conform to the requirements, then it cannot convert. She did not accept the friendly amendment.

Commissioner Mendall expressed disagreement to the motion because it excluded three and four units from the proposed amended ordinance and argued that as presented in the report, Hayward's rental stock may be found within smaller complexes. As a solution to making less burdensome the requirement for smaller developments, he recommended scaling back some of those requirements for smaller conversion projects involving three or four units.

Commissioner Peixoto indicated support for the ordinance for the homeownership attainment goal, for protection of seniors, and for the relocation assistance; however, he expressed concern for projects consisting of less than 15 units that will not be required to have a property management to work in association with homeowner associations. He expressed that the rationale of needs for larger units is true of smaller units as well. Additionally, he mentioned that three property management associations he contacted have reasonable prices for the administrative oversight function.

Commissioner Zermeño indicated that from experience, the notion of not requiring a property management for less than 15 will take care of itself when the developer meets with the homeowners at the initial stage to discuss administrative functions, as was the case in a development in which he used to reside.

Commissioner Sacks indicated that smaller groups get a higher number of participants and therefore, she was not concerned for lack of property management for smaller complexes. She added a friendly amendment that the \$1,000 assistance for moving expense be tied to the consumer price index with a base year of adoption.

After corroborating with Assistant City Attorney Connolly, Commissioner Mendall offered a substitute motion identical to the one presented on the floor with the exception that tri-plexes and larger developments be included as part of the amended ordinance. As there was not a second, the motion died.

Commissioner Lavelle expressed support for the motion and indicated disagreement for the remarks about parking requirements and suggestions for variance requests because she believes that parking regulations are already in place in the City and do not need further review. She favored five-year leases for the disabled and those 65 years or older.

Commissioner Thnay commended staff for the amended ordinance; however, because the parking concerns were not been considered for further analysis in the conversion, he would vote against the motion.

For the record and per Commission Secretary Lens' request, Chair McKillop re-stated the motion and outlined the friendly amendments as presented on the floor.



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Commissioner Zermeño moved, seconded by Commissioner Sacks and approved with Commissioner Thnay voting against, to forward a recommendation of approval to the City Council for Negative Declaration and to adopt the proposed amendments to the Subdivision Ordinance with amendment to exclude conversion of four or fewer rental units to ownership housing, that the five-to-ten percent discount in unit price offered to tenant-purchasers also include an option to allow it to be five-to-ten percent down payment assistance, and that the \$1,000 moving expense be tied to the consumer price index with a base year of adoption.

**ADDITIONAL MATTERS**

**3. Oral Report on Planning and Zoning Matters**

Planning Manager Rizk announced that at the next meeting in two weeks, the Commissioners will be reviewing a Radio Transmission Tower Facility at the end of West Winton Avenue and proposal to extend another map.

**4. Commissioners' Announcements, Referrals**

Commissioner Zermeño asked about the opening of Rigatoni's Restaurant and mentioned three upcoming new restaurants in Southland. Planning Manager Rizk indicated the expected opening of Rigatoni's Restaurant to be in a couple of months, and that the Elephant Bar Restaurant is opened and Mimi's Café is expected to follow soon.

Commissioner Mendall requested that a work session be scheduled related to homeowners association size and property management. Planning Manager Rizk indicated that it will be scheduled for a future work session. He also indicated that Mission Paradise, in the South Hayward BART/Mission Boulevard Corridor Concept Design Plan area, is another project plan for review at the next meeting.

Commissioner Thnay announced a crab feed at St. Clement Church scheduled for Saturday. He reported graffiti on the overhead of train tracks near the Industrial Parkway close to Mission Boulevard.

Commissioner Lavelle reminded everyone to attend the celebration of Martin Luther King Jr., scheduled for Monday, January 15 at Centennial Hall at 6:30 p.m.

**APPROVAL OF MINUTES**

The minutes of October 5, 2006, were not acted upon.

**ADJOURNMENT**

Chair McKillop adjourned the meeting at 9:50 p.m.

**APPROVED:**

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Mary Lavelle, Secretary  
Planning Commission

**ATTEST:**

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Miriam Lens  
Commission Secretary